IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. MP(M) No. 1957 of 2026
Reserved on: 27.10.2026
Date of Decision 30.10.2026

Pardeep Kumar .... Petitioner

Versus

State of HP .... Respondent

Coram
Hon'ble Mr Justice Rakesh Kainthla, Judge.
Whether approved for reporting?[1] No.

For the Petitioner	:	Mr Anirudh R.H. Sharma, Advocate.
For the respondent/ State	:	Mr Ajit Sharma, Deputy Advocate General.

Rakesh Kainthla, Judge

The petitioner has filed the present petition seeking regular bail in FIR No. 204 of 2025 dated 19.06.2025, registered at Police Station Nalagarh, District Solan, H.P. for the commission of offences punishable under Sections 20 and 29 of the Narcotic Drugs and Psychotropic Substances Act (NDPS Act).

[1] Whether reporters of Local Papers may be allowed to see the judgment? Yes.

3 It has been asserted that the police had arrested the petitioner on 19.06.2025. The police have completed the investigation and filed the charge sheet before the Court. The petitioner's custody is no longer required. The petitioner would abide by the terms and conditions that the Court may impose. Hence, it was prayed that the present petition be allowed and the petitioner be released on bail.

4. The petition is opposed by filing a status report asserting that the police had received secret information on 19.06.2025 at about 12:05 a.m. that two persons had concealed charas in a vehicle bearing registration no. HP-35-7937 parked at Baglehar. The police could recover a huge quantity of charas by searching the vehicle. The information was credible, and any delay in procuring the search warrant would have led to the destruction of the case property; hence, the information was reduced to writing and was sent to the Supervisory Officer. The police joined Didar Singh and Rajesh Kumar as witnesses and proceeded towards the spot indicated in the information. The vehicle was found parked on the roadside. Two persons were present in the vehicle. The driver identified himself as Pramod Kumar, and the person sitting beside the driver identified

himself as Pradeep Kumar. The police searched the vehicle in the presence of the occupants and independent witnesses and recovered one backpack containing 1.306 kilograms of Charas. The police seized the charas and arrested the occupants of the vehicle. The charas was sent to the FSL and was stated to be an extract of cannabis and a sample of charas after the analysis. The charge-sheet was filed before the Court. The statements of three witnesses have been recorded, and the matter is listed before the learned trial Court on 5.11.2026. Hence, the status report.

5. I have heard Mr Anirudh R.H. Sharma, learned counsel for the petitioner and Mr Ajit Sharma, learned Deputy Advocate General, for the respondent/State.

6. Mr Anirudh R.H. Sharma, learned counsel for the petitioner, submitted that the police had prepared a memo (Annexure A-1) regarding their search, in which Section 20 and 29 of the NDPS Act were mentioned, which clearly shows that the police had prior information, and the whole of the prosecution case becomes doubtful. The petitioner has remained in custody for more than one year. The police have completed the investigation and filed the charge-sheet before the Court. No

fruitful purpose would be served by detaining the petitioner in custody. Hence, he prayed that the present petition be allowed and the petitioner be released on bail.

7. Mr Ajit Sharma, learned Deputy Advocate General for the respondent State, submitted that the petitioner was found in possession of commercial quantity of charas. The rigours of Section 37 of the NDPS Act apply to the present case and the petitioner has not satisfied the twin conditions laid down under Section 37 of the NDPS Act. Hence, he prayed that the present petition be dismissed.

8. I have given considerable thought to the submissions made at the bar and have gone through the records carefully.

9. The parameters for granting bail were considered by the Hon'ble Supreme Court in ***Pinki v. State of U.P., (2025) 7 SCC 314: 2025 SCC OnLine SC 781,*** wherein it was observed at page 380:

> **(*i*) *Broad principles for the grant of bail***
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> **56.** In ***Gudikanti Narasimhulu v. High Court of A.P., (1978) 1 SCC 240: 1978 SCC (Cri) 115***, Krishna Iyer, J., while elaborating on the content of Article 21 of the Constitution of India in the context of personal liberty of a person under trial, has laid down the key factors that should be considered while granting bail, which are extracted as under: (SCC p. 244, paras 7-9)

"7. It is thus obvious that the nature of the charge is the vital factor, and the nature of the evidence is also pertinent. The punishment to which the party may be liable, if convicted or a conviction is confirmed, also bears upon the issue.

8. Another relevant factor is whether the course of justice would be thwarted by him who seeks the benignant jurisdiction of the Court to be freed for the time being. [***Patrick Devlin, "The Criminal Prosecution in England"*** (Oxford University Press, London 1960) p. 75 — Modern Law Review, Vol. 81, Jan. 1968, p. 54.]

9. Thus, the legal principles and practice validate the Court considering the likelihood of the applicant interfering with witnesses for the prosecution or otherwise polluting the process of justice. It is not only traditional but rational, in this context, to enquire into the antecedents of a man who is applying for bail to find whether he has a bad record, particularly a record which suggests that he is likely to commit serious offences while on bail. In regard to habituals, it is part of criminological history that a thoughtless bail order has enabled the bailee to exploit the opportunity to inflict further crimes on the members of society. Bail discretion, on the basis of evidence about the criminal record of a defendant, is therefore not an exercise in irrelevance." (emphasis supplied)

57. In ***Prahlad Singh Bhati v. State (NCT of Delhi), (2001) 4 SCC 280: 2001 SCC (Cri) 674***, this Court highlighted various aspects that the courts should keep in mind while dealing with an application seeking bail. The same may be extracted as follows: (SCC pp. 284-85, para 8)

"*8. The jurisdiction to grant bail has to be exercised on the basis of well-settled principles, having regard to the circumstances of each case and not in an arbitrary manner. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character, behaviour, means and standing*

of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public or State and similar other considerations. It has also to be kept in mind that for the purposes of granting the bail the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the court dealing with the grant of bail can only satisfy it (sic itself) as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge." (emphasis supplied)

58. This Court in ***Ram Govind Upadhyay v. Sudarshan Singh, (2002) 3 SCC 598: 2002 SCC (Cri) 688***, speaking through Banerjee, J., emphasised that a court exercising discretion in matters of bail has to undertake the same judiciously. In highlighting that bail should not be granted as a matter of course, bereft of cogent reasoning, this Court observed as follows: (SCC p. 602, para 3)

"*3. Grant of bail, though being a discretionary order, but, however, calls for the exercise of such a discretion in a judicious manner and not as a matter of course. An order for bail bereft of any cogent reason cannot be sustained. Needless to record, however, that the grant of bail is dependent upon the contextual facts of the matter being dealt with by the court and facts do always vary from case to case. While the placement of the accused in society, though it may be considered by itself, cannot be a guiding factor in the matter of grant of bail, the same should always be coupled with other circumstances warranting the grant of bail. The nature of the offence is one of the basic considerations for the grant of bail — the more heinous is the crime, the greater is the chance of rejection of the bail, though, however, dependent on the factual matrix of the matter.*" (emphasis supplied)

59. In ***Kalyan Chandra Sarkar v. Rajesh Ranjan, (2004) 7 SCC 528: 2004 SCC (Cri) 1977***, this Court held that although it is

established that a court considering a bail application cannot undertake a detailed examination of evidence and an elaborate discussion on the merits of the case, yet the court is required to indicate the prima facie reasons justifying the grant of bail.

60. In ***Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496: (2011) 3 SCC (Cri) 765***, this Court observed that where a High Court has granted bail mechanically, the said order would suffer from the vice of non-application of mind, rendering it illegal. This Court held as under with regard to the circumstances under which an order granting bail may be set aside. In doing so, the factors which ought to have guided the Court's decision to grant bail have also been detailed as under: (SCC p. 499, para 9)

> "*9. ... It is trite that this Court does not, normally, interfere with an order passed by the High Court granting or rejecting bail to the accused. However, it is equally incumbent upon the High Court to exercise its discretion judiciously, cautiously and strictly in compliance with the basic principles laid down in a plethora of decisions of this Court on the point. It is well settled that, among other circumstances, the factors to be borne in mind while considering an application for bail are*:
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> (*i*) *whether there is any prima facie or reasonable ground to believe that the accused had committed the offence*;
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> (*ii*) *nature and gravity of the accusation*;
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> (*iii*) *severity of the punishment in the event of conviction*;
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> (*iv*) *danger of the accused absconding or fleeing, if released on bail*;
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> (*v*) *character, behaviour, means, position and standing of the accused*;
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> (*vi*) *likelihood of the offence being repeated*;
>
> (*vii*) *reasonable apprehension of the witnesses being influenced; and*

(*viii*) *danger, of course, of justice being thwarted by grant of bail.*" (emphasis supplied)

xxxxxxx

62. One of the judgments of this Court on the aspect of application of mind and requirement of judicious exercise of discretion in arriving at an order granting bail to the accused is ***Brijmani Devi v. Pappu Kumar, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170***, wherein a three-Judge Bench of this Court, while setting aside an unreasoned and casual order (***Pappu Kumar v. State of Bihar, 2021 SCC OnLine Pat 2856*** and ***Pappu Singh v. State of Bihar, 2021 SCC OnLine Pat 2857***) of the High Court granting bail to the accused, observed as follows: (***Brijmani Devi v. Pappu Kumar, (2022) 4 SCC 497 : (2022) 2 SCC (Cri) 170]***), SCC p. 511, para 35)

"*35. While we are conscious of the fact that liberty of an individual is an invaluable right, at the same time, while considering an application for bail, courts cannot lose sight of the serious nature of the accusations against an accused and the facts that have a bearing in the case, particularly when the accusations may not be false, frivolous or vexatious in nature but are supported by adequate material brought on record to enable a court to arrive at a prima facie conclusion. While considering an application for the grant of bail, a prima facie conclusion must be supported by reasons and must be arrived at after having regard to the vital facts of the case brought on record. Due consideration must be given to facts suggestive of the nature of crime, the criminal antecedents of the accused, if any, and the nature of punishment that would follow a conviction vis-à-vis the offence(s) alleged against an accused.*" (emphasis supplied)

10. Hon'ble Supreme Court held in ***State of Rajasthan v. Balchand, (1977) 4 SCC 308: 1977 SCC (Cri) 594: 1977 SCC OnLine SC 261*** that the normal rule is bail and not jail, except where the

gravity of the crime or the heinousness of the offence suggests otherwise. It was observed at page 308:

> **2.** The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks enlargement on bail from the Court. We do not intend to be exhaustive but only illustrative.
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> **3.** It is true that the gravity of the offence involved is likely to induce the petitioner to avoid the course of justice and must weigh with us when considering the question of jail. So also, the heinousness of the crime...."

11. The present petition has to be decided as per the parameters laid down by the Hon'ble Supreme Court.

12. The status report states that the police searched the vehicle bearing registration no. HP-35-7937 and recovered 1.306 kilograms of charas. The petitioner was occupying the passenger seat in the vehicle. In ***Madan Lal versus State of H.P. (2003) 7 SCC 465: 2003 SCC (Cri) 1664: 2003 SCC OnLineSC 874*****,** the contraband was recovered from a vehicle, and it was held that all the occupants of the vehicle would be in conscious possession of the contraband. It was observed:

> "19. Whether there was conscious possession has to be determined with reference to the factual backdrop. The facts which can be culled out from the evidence on record

are that all the accused persons were travelling in a vehicle, and as noted by the trial court, they were known to each other, and it has not been explained or shown as to how they travelled together from the same destination in a vehicle which was not a public vehicle.

20. Section 20(b) makes possession of contraband articles an offence. Section 20 appears in Chapter IV of the Act, which relates to offences for possession of such articles. It is submitted that to make the possession illicit, there must be conscious possession.

21. It is highlighted that unless the possession was coupled with the requisite mental element, i.e., conscious possession and not mere custody without awareness of the nature of such possession, Section 20 is not attracted.

22. The expression "possession" is a polymorphous term that assumes different colours in different contexts. It may carry different meanings in contextually different backgrounds. It is impossible, as was observed in the ***Supdt. & Remembrancer of Legal Affairs, W.B. v. Anil Kumar Bhunja [(1979) 4 SCC 274: 1979 SCC (Cri) 1038: AIR 1980 SC 52]*** to work out a completely logical and precise definition of "possession" uniformly applicable to all situations in the context of all statutes.

23. The word "conscious" means awareness of a particular fact. It is a state of mind which is deliberate or intended.

24. As noted in ***Gunwantlal v. State of M.P. [(1972) 2 SCC 194: 1972 SCC (Cri) 678: AIR 1972 SC 1756],*** possession in a given case need not be physical possession but can be constructive, having power and control over the article in the case in question, while the person to whom physical possession is given holds it subject to that power or control.

25. The word "possession" means the legal right to possession (see ***Heath v. Drown [(1972) 2 All ER 561: 1973 AC 498: (1972) 2 WLR 1306 (HL)]***). In an interesting case, it was observed that where a person keeps his firearm in his mother's flat, which is safer than his own home, he must

> be considered to be in possession of the same. (See ***Sullivan v. Earl of Caithness [(1976) 1 All ER 844: 1976 QB 966: (1976) 2 WLR 361 (QBD)]***.)
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> 26. Once possession is established, the person who claims that it was not a conscious possession has to establish it because how he came to be in possession is within his special knowledge. Section 35 of the Act gives a statutory recognition of this position because of the presumption available in law. Similar is the position in terms of Section 54, where a presumption is also available to be drawn from possession of illicit articles.
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> 27. In the factual scenario of the present case, not only possession but conscious possession has been established. It has not been shown by the accused-appellants that the possession was not conscious in the logical background of Sections 35 and 54 of the Act."

13. Therefore, the petitioner was *prima facie* found in possession of 1.306 kilograms of charas, and the burden would shift upon him to show that he was not in possession as per Sections 35 and 54 of the NDPS Act.

14. The Central Government has notified 01 kilogram of Charas as commercial quantity. Therefore, the petitioner was found in conscious possession of a commercial quantity of *charas*, attracting the rigours of Section 37 of the NDPS Act to the present case.

15. Section 37 of the NDPS Act provides that in an offence involving a commercial quantity, the Court should be satisfied

that the accused is not guilty of the commission of an offence and is not likely to commit any offence while on bail. It reads as follows:

> "37. Offences to be cognisable and non-bailable. –
>
> (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)—
>
> (a) every offence punishable under this Act shall be cognisable.
>
> (b) no person accused of an offence punishable for offences under section 19, section 24, or section 27A and also for offences involving commercial quantity, shall be released on bail or his own bond unless–
>
> (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
>
> (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.
>
> (2) The limitations on granting of bail specified in clause (b) of sub-section (1) are in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force, on granting of bail."

16. This Section was interpreted by the Hon'ble Supreme Court in ***Union of India Versus Niyazuddin & Another (2018) 13 SCC 738,*** and it was held that in the absence of the satisfaction that the accused is not guilty of an offence and he is not likely to

commit an offence while on bail, he cannot be released on bail. It was observed:

> "7. Section 37 of the NDPS Act contains special provisions with regard to the grant of bail in respect of certain offences enumerated under the said Section. They are:
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> (1) In the case of a person accused of an offence punishable under Section 19,
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> (2) Under Section 24,
>
> (3) Under Section 27A and
>
> (4) offences involving a commercial quantity.
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> 8. The accusation in the present case is with regard to the fourth factor, namely, commercial quantity. Be that as it may, once the Public Prosecutor opposes the application for bail to a person accused of the enumerated offences under Section 37 of the NDPS Act, in case the court proposes to grant bail to such a person, two conditions are to be mandatorily satisfied in addition to the normal requirements under the provisions of the Cr.P.C. or any other enactment.
>
> (1) The court must be satisfied that there are reasonable grounds for believing that the person is not guilty of such an offence;
>
> (2) that the person is not likely to commit any offence while on bail."

17. This position was reiterated in ***State of Kerala Versus Rajesh, AIR 2020 SC 721,*** wherein it was held:

> "19. This Court has laid down broad parameters to be followed while considering the application for bail moved by the accused involved in offences under the NDPS Act. In ***Union of India vs Ram Samujh and Ors., (1999) 9 SCC 429***, it has been elaborated as under: -

"7. It is to be borne in mind that the aforesaid legislative mandate is required to be adhered to and followed. It should be borne in mind that in a murder case, the accused commits the murder of one or two persons, while those persons who are dealing in narcotic drugs are instrumental in causing death or in inflicting death-blow to a number of innocent young victims, who are vulnerable; it causes deleterious effects and a deadly impact on the society; they are a hazard to the society; even if they are released temporarily, in all probability, they would continue their nefarious activities of trafficking and/or dealing in intoxicants clandestinely. The reason may be the large stake and illegal profit involved. This Court, dealing with the contention with regard to punishment under the NDPS Act, has succinctly observed about the adverse effect of such activities in ***Durand Didier vs Chief Secy. Union Territory of Goa, (1990) 1 SCC 95)*** as under:

> 24. With deep concern, we may point out that the organised activities of the underworld and the clandestine smuggling of narcotic drugs and psychotropic substances into this country and illegal trafficking in such drugs and substances have led to drug addiction among a sizeable section of the public, particularly the adolescents and students of both sexes and the menace has assumed serious and alarming proportions in recent years. Therefore, in order to effectively control and eradicate this proliferating and booming devastating menace, causing deleterious effects and a deadly impact on society as a whole, Parliament, in its wisdom, has made effective provisions by introducing Act 81 of 1985 specifying mandatory minimum imprisonment and fines.

> 8. To check the menace of dangerous drugs flooding the market, Parliament has provided that the person accused of offences under the NDPS Act should not be released on bail during trial unless the mandatory conditions provided in Section 37, namely,
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> > (i) there are reasonable grounds for believing that the accused is not guilty of such offence; and
> >
> > (ii) that he is not likely to commit any offence while on bail are satisfied. The High Court has not given any justifiable reason for not abiding by the aforesaid mandate while ordering the release of the respondent accused on bail. Instead of attempting to take a holistic view of the harmful socio-economic consequences and health hazards which would accompany trafficking illegally in dangerous drugs, the court should implement the law in the spirit with which Parliament, after due deliberation, has amended."

20. The scheme of Section 37 reveals that the exercise of power to grant bail is not only subject to the limitations contained under Section 439 of the CrPC but is also subject to the limitation placed by Section 37, which commences with the non-obstante clause. The operative part of the said section is in the negative form, prescribing the enlargement of bail to any person accused of the commission of an offence under the Act unless the two conditions are satisfied. The first condition is that the prosecution must be given an opportunity to oppose the application, and the second is that the Court must be satisfied that there are reasonable grounds for believing that he is not guilty of such an offence. If either of these two conditions is not satisfied, the ban on granting bail operates.

> 21. The expression "reasonable grounds" means something more than prima facie grounds. It contemplates substantial probable causes for believing that the accused is not guilty of the alleged offence. The reasonable belief contemplated in the provision requires the existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence. In the case at hand, the High Court seems to have completely overlooked the underlying object of Section 37 that, in addition to the limitations provided under the CrPC, or any other law for the time being in force, regulating the grant of bail, its liberal approach in the matter of bail under the NDPS Act is indeed uncalled for."

18. A similar view was taken in ***Union of India v. Mohd. Nawaz Khan, (2021) 10 SCC 100: (2021) 3 SCC (Cri) 721: 2021 SCC OnLine SC 1237,*** wherein it was observed at page 110:

> **"21.** Under Section 37(1)(*b*)(*ii*), the limitations on the grant of bail for offences punishable under Sections 19, 24 or 27-A and also for offences involving a commercial quantity are:
>
> (*i*) The Prosecutor must be given an opportunity to oppose the application for bail; and
>
> (ii) There must exist "reasonable grounds to believe" that (*a*) the person is not guilty of such an offence, and (*b*) he is not likely to commit any offence while on bail.
>
> **22.** The standard prescribed for the grant of bail is "reasonable grounds to believe" that the person is *not* guilty of the offence. Interpreting the standard of "reasonable grounds to believe", a two-judge Bench of this Court in ***Shiv Shanker Kesari*** [***Union of India v. Shiv Shanker Kesari, (2007) 7 SCC 798: (2007) 3 SCC (Cri) 505***], held that: (SCC pp. 801-02, paras 7-8 & 10-11)

"*7. The expression used in Section 37(1)(b)(ii) is "reasonable grounds". The expression means something more than prima facie grounds. It connotes substantial probable causes for believing that the accused is not guilty of the offence charged, and this reasonable belief contemplated, in turn, points to the existence of such facts and circumstances as are sufficient in themselves to justify the recording of satisfaction that the accused is not guilty of the offence charged.*

8. The word "reasonable" has in law the prima facie meaning of reasonable in regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. It is difficult to give an exact definition of the word "reasonable".

'7. ... *Stroud's Judicial Dictionary*, 4th Edn., p. 2258 states that it would be unreasonable to expect an exact definition of the word "reasonable". Reason varies in its conclusions according to the idiosyncrasies of the individual and the times and circumstances in which he thinks. The reasoning which built up the old scholastic logic sounds now like the jingling of a child's toy.'

[See ***MCD v. Jagan Nath Ashok Kumar [MCD v. Jagan Nath Ashok Kumar, (1987) 4 SCC 497], SCC p. 504, para 7 and Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd. [Gujarat Water Supply & Sewerage Board v. Unique Erectors (Gujarat) (P) Ltd., (1989) 1 SCC 532***]]

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10. The word "reasonable" signifies "in accordance with reason". In the ultimate analysis, it is a question of fact whether a particular act is reasonable or not, which depends on the circumstances in a given situation. (See ***Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd.***

> ***[Municipal Corpn. of Greater Mumbai v. Kamla Mills Ltd. (2003) 6 SCC 315***]
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> *11*. The court, while considering the application for bail with *reference* to Section 37 of the Act, is not called upon to record a finding of not guilty. It is for the limited purpose essentially confined to the question of releasing the accused on bail that the court is called upon to see if there are reasonable grounds for believing that the accused is not guilty and records its satisfaction about the existence of such grounds. But the court has not to consider the matter as if it is pronouncing a judgment of acquittal and recording a finding of not guilty." (emphasis supplied)
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> **23.** Based on the above precedent, the test which the High Court and this Court are required to apply while granting bail is whether there are reasonable grounds to believe that the accused has *not* committed an offence and whether he is likely to commit any offence while on bail. Given the seriousness of offences punishable under the NDPS Act and in order to curb the menace of drug trafficking in the country, stringent parameters for the grant of bail under the NDPS Act have been prescribed."

19. It was held in ***Union of India v. Ajay Kumar Singh, 2023 SCC OnLine SC 346,*** that bail cannot be granted without complying with the requirement of Section 37 of the NDPS Act. It was observed:

> **4.** This apart, it is noticed that the High Court, in passing the impugned order of bail, had lost sight of Section 37 of the NDPS Act, which, *inter alia*, provides that no person accused of an offence involving commercial quantity shall be released on bail unless the twin conditions laid down therein are satisfied, namely, (i) the public prosecutor has been given an opportunity to oppose the bail application;

and (ii) the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any such offence while on bail.

15. For the sake of convenience Section 37(1) is reproduced hereinbelow: —

> "37. Offences to be cognisable and non-bailable.-
>
> (1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974)-
>
> (a) every offence punishable under this Act shall be cognisable.
>
> (b) no person accused of an offence punishable for offences under section 19 or section 24 or section 27A, and also for offences involving commercial quantity, shall be released on bail or on his own bond unless-
>
> (i) the Public Prosecutor has been given an opportunity to oppose the application for such release, and
>
> (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."

16. In view of the above provisions, it is implicit that no person accused of an offence involving trade in a commercial quantity of narcotics is liable to be released on bail unless the court is satisfied that there are reasonable grounds for believing that he is not guilty of such an offence and that he is not likely to commit any offence while on bail.

20. It was held in ***State of Meghalaya v. Lalrintluanga Sailo, 2024 SCC OnLine SC 1751,*** that the grant of bail without

considering Section 37 of the NDPS Act is impermissible. It was observed:

> "**5.** There cannot be any doubt with respect to the position that, in cases involving the commercial quantity of narcotic drugs or psychotropic substances, while considering the application for bail, the Court is bound to ensure the satisfaction of conditions under Section 37(1)(b)(ii) of the NDPS Act. The said provision reads thus: —
>
> > *"37(1)(b)(ii)- where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail."*
>
> **6.** While considering the cases under the NDPS Act, one cannot be oblivious of the objects and reasons for bringing the said enactment after repealing the then-existing laws relating to Narcotic drugs. The object and reasons given in the Act itself read thus:—
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> > *"An Act to consolidate and amend the law relating to narcotic drugs, to make stringent provisions for the control and regulation of operations relating to narcotic drugs and psychotropic substances, to provide for the forfeiture of property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, to implement the provisions of the International Convention on Narcotic Drugs and Psychotropic Substances and for matters connected therewith."*
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> In the decision in ***Collector of Customs, New Delhi v. Ahmadalieva Nodira (2004) 3 SCC 549***, the three-judge bench of this Court considered the provisions under Section 37(1)(b) as well as 37(1)(b)(ii) of the NDPS Act, with regard to the expression "reasonable grounds" used therein. This Court held that it means something more than the *prima facie* grounds and that it contemplates

substantial and probable causes for believing that the accused is not guilty of the alleged offence. Furthermore, it was held that the reasonable belief contemplated in the provision would require the existence of such facts and circumstances as are sufficient in themselves to justify satisfaction that the accused is not guilty of the alleged offence.

As relates to the twin conditions under Section 37(1)(b)(ii) of the NDPS Act, viz., that, firstly, there are reasonable grounds for believing that the accused is not guilty of such offence and, secondly, he is not likely to commit any offence while on bail, it was held therein that they are cumulative and not alternative. Satisfaction of the existence of those twin conditions had to be based on the 'reasonable grounds', as referred to above.

7. In the decision in ***State of Kerala v. Rajesh (2020) 12 SCC 122***, after reiterating the broad parameters laid down by this Court to be followed while considering an application for bail moved by an accused involved in offences under the NDPS Act, in paragraph 18 thereof this Court held that the scheme of Section 37 of the NDPS Act would reveal that the exercise of power to grant bail in such cases is not only subject to the limitations contained under Section 439 of the Code of Criminal Procedure, but also subject to the limitation placed by Section 37(1)(b)(ii), NDPS Act. Further, it was held that in case one of the two conditions thereunder is not satisfied, the ban on granting bail would operate.

8. Thus, the provisions under Section 37(1)(b)(ii) of the NDPS Act and the decisions referred supra reveal the consistent view of this Court that while considering the application for bail made by an accused involved in an offence under the NDPS Act, a liberal approach ignoring the mandate under Section 37 of the NDPS Act is impermissible. Recording a finding mandated under Section 37 of the NDPS Act, which is a *sine qua non* for granting bail to an accused under the NDPS Act, cannot be avoided while passing orders on such applications."

21. In the present case, the prosecution has collected sufficient material to *prima facie* connect the petitioner with the commission of the crime. There is nothing on record to show that the petitioner would not indulge in the commission of an offence if released on bail. Hence, he has not satisfied the twin conditions laid down in Section 37 of the ND&PS Act.

22. It was submitted that the police had mentioned Sections 20 and 29 of the NDPS Act in the memo of the search of the police officials, which makes the prosecution case doubtful. This submission will not help the petitioner, because it was the specific case of the prosecution that the police had received secret information regarding the transportation of charas in a vehicle by two persons. This information disclosed the commission of the offences punishable under Sections 20 and 29 of the NDPS Act, and the police were justified in mentioning these sections.

23. It was submitted that bail is a Rule and Jail is an exception, and the petitioner is entitled to bail on this consideration. This submission will not help the petitioner, as he is *prima facie* involved in the commission of an offence

punishable under Section 20 of the NDPS Act involving the commercial quantity. It was laid down by the Hon'ble Supreme Court in ***Narcotics Control Bureau v. Kashif*, *(2024) 11 SCC 372: 2024 SCC OnLine SC 3848*** that in cases under the NDPS Act involving the commercial quantity, the negation of bail is the rule and its grant an exception. It was observed at page 381:

> ***"Compliance with the mandate under Section 37***
>
> **9.** There has been a consistent and persistent view of this Court that in the NDPS cases, where the offence is punishable with a minimum sentence of ten years, the accused shall generally not be released on bail. *Negation of bail is the rule, and its grant is an exception*. While considering the application for bail, the court has to bear in mind the provisions of Section 37 of the NDPS Act, which are mandatory in nature. The recording of findings as mandated in Section 37 is a sine qua non for granting bail to the accused involved in the offences under the said Act."

24. It was submitted that the independent witnesses have not supported the prosecution version and the petitioner is entitled to bail. This submission will not help the petitioner. It was laid down by the Delhi High Court in ***Dineet v. State (NCT of Delhi), 2025 SCC OnLine Del 8603,*** that it is impermissible for the bail Court to appreciate the evidence recorded during the trial and grant bail on the ground that the independent witness has not supported the prosecution's case. It was observed:

"**17.** Addressing Mr Mahajan's submissions, it is pertinent to note that nearly the entirety of the petitioner's case rests upon the assumption that this Court may enter into witness testimonies and evidence to determine contradictions and the hostility of witnesses at the stage of bail.

18. However, it is trite that the same is not within the power of this Court at the stage of bail, as laid down in ***Satish Jaggi v. State of Chhattisgarh (2007) 11 SCC 195 : (2008) 1 SCC (Cri) 660***, paragraphs 11 and 12 of which merit reproduction:

> "11. On the aforesaid reasoning, the learned Chief Justice thought it fit to grant bail. Mr A.K. Ganguli, learned Senior Counsel appearing on behalf of the appellant complainant, Mr Amarendra Sharan, learned ASG appearing on behalf of CBI and Mr Rajiv Dutta, learned Senior Counsel appearing on behalf of the State of Chhattisgarh strenuously contended that having regard to the observations and findings of the learned Chief Justice as recorded above, it clearly shows that the learned Chief Justice, while granting bail to the accused, virtually decided the case on merit, which amounts to acquitting the accused of the criminal charge levelled against him without trial. Per contra, Mr Vivek Tankha, learned Senior Counsel, contended that now the evidence is closed, so there is no question of the accused tampering with the prosecution witnesses or fleeing from justice. He further contended that now the arguments in the case have finally started, and the arguments of the prosecution are over, and only the defence is to give its reply. He, accordingly, contended that the bail granted by the learned Chief Justice need not be disturbed.
>
> 12. Normally, if the offence is non-bailable, bail can also be granted if the facts and circumstances so demand. We have already observed that in granting bail in a non-bailable offence, the primary

> consideration is the gravity and the nature of the offence. A reading of the order of the learned Chief Justice shows that the nature and the gravity of the offence and its impact on the democratic fabric of society were not at all considered. We are more concerned with the observations and findings recorded by the learned Chief Justice on the credibility and the evidential value of the witnesses at the stage of granting bail. By making such observations and findings, the learned Chief Justice has virtually acquitted the accused of all the criminal charges levelled against him even before the trial. The trial is in progress, and if such findings are allowed to stand, it would seriously prejudice the prosecution's case. At the stage of granting bail, the court can only go into the question of the prima facie case established for granting bail. It cannot go into the question of the credibility and reliability of the witnesses put up by the prosecution. The question of credibility and reliability of prosecution witnesses can only be tested during the trial."

19. By virtue of the aforementioned paragraphs from the Hon'ble Supreme Court's decision in *Satish Jaggi*, it is evinced that this Court, at the stage of Bail, cannot look into the allegations of PW2 being a witness who has turned hostile, nor apply its mind to alleged contradictions in his statement under Section 161 of the CrPC when compared with his testimony in Court, as the same would amount to appreciation of the evidentiary value of his statement and testimony, and this is an exercise that is only to be conducted during the course of trial.

20. The same has been relied upon by the Hon'ble Supreme Court in the judgment of ***State of Karnataka* v. *Sri Darshan, 2025 SCC OnLine SC 1702***, with the following paragraphs of this decision reproduced for ready reference:

"20.2.5. *Further, such an approach of the High Court is contrary to the judicial precedents of this Court, including* Satish Jaggi *v.* State of Chhattisgarh *(supra)*, Kanwar Singh Meena *v.* State of Rajasthan[4], *wherein it was held that courts, while considering bail, should not assess the credibility of witnesses, as this function squarely lies within the domain of the trial Court. Thus, the impugned order of the High Court violates this principle by commenting on the delay in the witness statements and imputing a lack of credibility at this stage"* (emphasis supplied)

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"20.3.6. In the present case, the High Court also proceeded to analyse and discount the credibility of certain prosecution witnesses and forensic material. It observed contradictions in the eyewitness statements concerning the overt acts of the accused (para 26). It expressed doubts about the prosecution's explanation for the delay in recording the statements of CW. 76 and CW. 91 (para 27). It questioned the timing of the doctor's supplementary opinion and weighed its evidentiary worth (para 31). *As already pointed out, the credibility or reliability of witnesses is a matter for the trial Court to determine after full-fledged cross-examination. It is a trite law that statements recorded under section 161 Cr. P.C. are not substantive, and their evidentiary value can only be determined after cross-examination during trial. Any opinion rendered at the bail stage risks prejudging the outcome of the trial and must be avoided. Thus, the court's assessment of these aspects amounts to a premature appreciation of the probative value of prosecution evidence.*" (emphasis supplied)

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"24. On a cumulative analysis, it is evident that the order of the High Court suffers from serious legal infirmities. The order fails to record any special or cogent reasons for granting bail in a case involving charges under Sections 302, 120B, and 34 IPC. Instead,

> it reflects a mechanical exercise of discretion, marked by significant omissions of legally relevant facts. *Moreover, the High Court undertook an extensive examination of witness statements at the pre-trial stage, highlighting alleged contradictions and delays - issues that are inherently matters for the trial Court to assess through cross-examination. The trial Court alone is the appropriate forum to evaluate the credibility and reliability of witnesses.* Granting bail in such a serious case, without adequate consideration of the nature and gravity of the offence, the accused's role, and the tangible risk of interference with the trial, amounts to a perverse and wholly unwarranted exercise of discretion. The well-founded allegations of witness intimidation, coupled with compelling forensic and circumstantial evidence, further reinforce the necessity for cancellation of bail. Consequently, the liberty granted under the impugned order poses a real and imminent threat to the fair administration of justice and risks derailing the trial process. In light of these circumstances, this Court is satisfied that the present case calls for the exercise of its extraordinary jurisdiction under Section 439(2) Cr. P.C." (emphasis supplied)
>
> **21.** Drawing inspiration from the judgment in *Darshan*, the hostility of a witness cannot be interpreted as an automatic declaration of the prosecution's case as unconvincing, and thereby, in essence, result in the conduct of a mini-trial at the stage of bail and return findings upon the *ex-facie* merit of the accused's innocence/guilt.

25. It was laid down by the Hon'ble Supreme Court in ***X Vs. State of Rajasthan MANU/SC/1267/2024*** that ordinarily, in serious offences, the Trial Court or the High Court should not entertain the bail application of the accused after the

commencement of the trial and grant bail because of some discrepancy in the testimony. It was observed: -

> "14. Ordinarily, in serious offences like rape, murder, dacoity, etc., once the trial commences and the prosecution starts examining its witnesses, the Court, be it the Trial Court or the High Court, should be loath to entertain the bail application of the Accused.
>
> 15. Over a period of time, we have noticed two things, i.e., (i) either bail is granted after the charge is framed and just before the victim is to be examined by the prosecution before the trial court, or (ii) bail is granted once the recording of the oral evidence of the victim is complete, by looking into some discrepancies here or there in the deposition and thereby testing the credibility of the victim.
>
> 16. We are of the view that the aforesaid is not a correct practice that the Courts below should adopt. Once the trial commences, it should be allowed to reach its conclusion, which may either result in the conviction of the Accused or the acquittal of the Accused. The moment the High Court exercises its discretion in favour of the Accused and orders the release of the Accused on bail by looking into the deposition of the victim, it will have its own impact on the pending trial when it comes to appreciating the oral evidence of the victim. It is only if the trial gets unduly delayed and that, too, for no fault on the part of the Accused, the Court may be justified in ordering his release on bail on the ground that the right of the Accused to have a speedy trial has been infringed."

26. Similarly, it was held by this Court in ***Suraj Singh v. State of H.P., 2022 SCC OnLine HP 268*** that the Court exercising bail jurisdiction cannot appreciate the contradictions in the evidence. It was observed:

> **10.** Petitioner has placed reliance on the statements of witnesses already recorded by the learned Special Judge, in support of his argument to the effect that, from perusal of these statements, reasonable grounds can be entertained for concluding prima facie innocence of the petitioner. The arguments raised on behalf of the petitioner deserve to be rejected for the reason that this Court, while dealing with the bail application, will not appreciate the evidence being recorded during the trial. Undisputedly, only some of the witnesses out of the entire list of witnesses relied upon by the prosecution have been examined. In these circumstances, it is not prudent to form any opinion as to the innocence or guilt of the petitioner based on such partial evidence.

27. It was submitted that there is a delay in the progress of the trial and the petitioner is entitled to bail. This submission will also not help the petitioner. The status report specifically mentions that the statements of three witnesses have been recorded, and the matter is listed for recording the statements of the witnesses on 5.11.2026. The status report also mentions that the charge sheet was filed on 09.12.2025. The recording of statements of three witnesses within ten months does not show any delay in the progress of the trial. Further, the petitioner has not filed the copies of the order sheets to demonstrate that the delay is attributable to the prosecution and not to the petitioner. It was laid down by the Hon'ble Supreme Court in ***Union of India vs. Vijin K. Varghese 2025: INSC:1316*** that bail cannot be granted on

2026:HHC:47819

the ground of prolonged incarceration without satisfying the twin conditions laid down under Section 37 of the NDPS Act. It was observed: -

> "17. The High Court then, on the strength of those premises, recorded a finding that there exist reasonable grounds to believe that the applicant is not guilty of the alleged offence, treating prolonged incarceration and likely delay as the justification for bail. Such a finding is not a casual observation. It is the statutory threshold under Section 37(1)(b)(ii), which would disentitle the discretionary relief and grant of bail must necessarily rest on careful appraisal of the material available. A conclusion of this nature, if returned without addressing the prosecution's assertions of operative control and antecedent involvement, risks trenching upon the appreciation of evidence which would be in the domain of the trial court at first instance.
>
> 18. This Court ordinarily shows deference to the discretion exercised by the High Court while considering the grant of bail. However, offences involving a commercial quantity of narcotic drugs stand on a distinct statutory footing. Section 37 enacts a specific embargo on the grant of bail and obligates the Court to record satisfaction on the twin requirements noticed above, in addition to the ordinary tests under the Code of Criminal Procedure.
>
> 19. In the present case, the High Court has not undertaken the analysis of those twin requirements with reference to the material placed by the prosecution. The orders dated 22.01.2025 and 12.03.2025 do not refer to the allegation regarding the respondent's prior involvement in a seizure of narcotic drugs and psychotropic substances only days prior to the seizure forming the subject matter of the present complaint, nor do they engage with the prosecution's assertion as to the respondent's role in arranging, importing, clearing and supervising the

> consignments. The omission to consider these factors bears directly upon the statutory satisfaction required by Section 37(1)(b)."

28. A similar view was taken in ***Union of India v. Namdeo Ashruba Nakade SLP (Crl.) 9792/2025, decided on 07.11.2025,*** wherein it was observed:

> "11. In the present case, this Court finds that though the Respondent-accused was in custody for one year, four months, and charges have not been framed, yet the allegations are serious inasmuch as not only is the recovery much in excess of the commercial quantity, but the Respondent-accused allegedly got the cavities ingeniously fabricated below the trailer to conceal the contraband.
>
> 12. Prima facie, this Court is of the opinion that the Respondent-accused is involved in drug trafficking in an organised manner. Consequently, no case for dispensing with the mandatory requirement of Section 37 of the NDPS Act is made out in the present matter."

29. This position was reiterated in ***State of Punjab v. Sukhwinder Singh, 2026 SCC OnLine SC 671***, wherein it was observed:

> **9.** It is well-settled that in matters involving recovery of contraband in commercial quantity, the twin conditions under Section 37(1)(b)(ii) of the NDPS Act are mandatory and entail no relaxation merely on the ground that the accused has undergone prolonged incarceration during the pendency of trial. The provision casts upon the Court a duty to record, before enlarging an accused on bail, its satisfaction on two cumulative conditions, first, that there exist reasonable grounds for believing that the accused is not guilty of the offence charged; and second, that he is

not likely to commit any offence while on bail. The recording of such satisfaction is not a mere formality but a mandatory precondition, the non-observance of which vitiates the grant of bail. This Court, in *Kashif* (supra), has held in no uncertain terms that the recording of satisfaction on the twin conditions under Section 37 is mandatory and not merely directory, and that an order granting bail without such recorded satisfaction stands vitiated and cannot be sustained. The same view stands reiterated in ***Lalrintluanga Sailo*** (supra).

10. The impugned order, on its own showing, does not record the satisfaction mandated under Section 37(1)(b)(ii) of the NDPS Act. Far from recording such satisfaction, the High Court has gone on to observe that 'the rigours of Section 37 of the NDPS Act can be diluted bearing in mind the right to a speedy trial.' Such an approach is plainly contrary to the settled law laid down by this Court and deserves to be set aside on this ground alone. The right to speedy trial, rooted in Article 21 of the Constitution, is undoubtedly a precious Constitutional right. That said, in matters governed by a special enactment such as the NDPS Act, particularly where the recovery is of a commercial quantity, the said right under Article 21 must be exercised within the framework of Section 37 and cannot be pressed into service solely on the ground of delay to override it. The constitutional right under Article 21 and the special provision of law under Section 37, NDPS Act, are to be read harmoniously and not placed in opposition to each other. The High Court, by failing to record its satisfaction on the twin conditions under Section 37, has, in this Court's view, committed an error.

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9. The position of law on the grant of bail in matters involving the recovery of a commercial quantity of contraband under the NDPS Act is well settled. Section 37(1)(b)(ii) of the NDPS Act is cast in mandatory terms. Where the Public Prosecutor opposes the bail application,

> the Court can enlarge an accused on bail only upon recording its satisfaction on two cumulative conditions: first, that there are reasonable grounds for believing that the accused is not guilty of the offence; and second, that the accused is not likely to commit any offence while on bail. The recording of such satisfaction is not a mere formality but a jurisdictional requirement. This Court, in *Kashif* (supra), has held, in plain terms, that the non-recording of the twin satisfaction, being mandatory in nature, renders an order granting bail unsustainable. A similar view has been expressed in ***Lalrintluanga Sailo*** (supra) and ***Ajay Kumar Singh*** (supra).
>
> **10.** When the impugned order is tested against that settled position, it becomes apparent that paragraph 8 of the impugned order, which carries the weight of the reasoning, does not contain a finding on either of the twin conditions prescribed by Section 37(1)(b)(ii) of the NDPS Act. What the High Court has, instead, proceeded on is the proposition that "the rigours of Section 37 of the NDPS Act can be diluted bearing in mind the right to a speedy trial". The right to speedy trial under Article 21 of the Constitution is undoubtedly a valuable constitutional guarantee, but in the context of a special statute such as the NDPS Act dealing with commercial quantity, that right has to be read alongside, and not in displacement of, the mandate of Section 37. The omission to record the twin satisfaction prescribed by the statute, it appears, may have escaped the attention of the High Court.

30. Therefore, the petitioner cannot claim bail because of the violation of his right to a speedy trial.

31. No other point was urged.

2026:HHC:47819

33. In view of the above, the present petition fails, and it is dismissed. However, the petitioner is at liberty to approach the Court in case his trial is not concluded expeditiously.

34. The observations made hereinabove are regarding the disposal of this petition and will have no bearing whatsoever on the merits of the case.

(Rakesh Kainthla)
Judge.

30th October, 2026.
(Ravinder)